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FEB 20 2007

OFFICE OF PETITIONS

In re Application of :
Walter Herman Maria Louis Luyten :
Application No. 10/069,495 : DECISION ON PETITION
Filed: February 20, 2002 :
Attorney Docket No. JAB-1526 :

This is a decision on the petition, filed July 20, 2006, which is being treated as a petition under 37 CFR 1.181 (no fee), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is GRANTED to the extent noted infra.

This application was held abandoned for failure to timely respond to the final Office action of August 24, 2005, which set a three (3) month shortened statutory period for reply. A reply was due on or before November 24, 2005. A Notice of Abandonment was mailed on March 8, 2006.

Petitioner states that a reply was in fact timely filed. To support this assertion, petitioner has submitted a copy of a return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on February 28, 2006 of a Notice of Appeal (and fee of \$500) and a petition for a three month extension of time (and fee of \$1,020). A copy of the previously submitted reply accompanies the petition.

The Notice of Appeal and extension of time (and fees) acknowledged as having been received in the USPTO on February 28, 2006 are in fact of record in the application file. The Notice of Appeal paper with the extension of time and fees bears a certificate of mailing date of February 24, 2006, which renders the reply to the final Office action of August 24, 2005, as being timely filed. Accordingly, the Notice of Abandonment of March 8, 2006 is improper and is hereby vacated. The holding of abandonment for failure to timely reply to the final Office action is withdrawn.

However, as there is no indication that any further action was taken to maintain the pendency of this application following the timely filing of the Notice of Appeal, as demonstrated by applicant's own evidence,¹ this application stands abandoned.

Petitioner may wish to seek revival of this application under the provisions of 37 CFR 1.137.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
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By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Future correspondence with respect to this matter may also be filed electronically through the Electronic Filing System (EFS).

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Technology Center AU 1635 for mailing of a proper Notice of Abandonment for failure to timely take action following the timely filing of the Notice of Appeal of February 28, 2006.


Frances Hicks
Petitions Examiner
Office of Petitions

¹ MPEP 503 states that "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO."